

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 GRACE L. SANDOVAL,

11 Plaintiff,

12 vs.

13 TIFFANY NEWBY,

14 Defendant.

CASE NO. 09cv2148 WQH (RBB)

ORDER

HAYES, Judge:

15 The matters before the Court are the Motion for Leave to Proceed in Forma Pauperis
16 (Doc. # 2) and the Motion to Appoint Counsel (Doc. # 3).

17 **BACKGROUND**

18 On September 30, 2009, Plaintiff Grace L. Sandoval, a nonprisoner proceeding pro se,
19 initiated this action by filing the Complaint. (Doc. # 1). On September 30, 2009, Plaintiff also
20 filed the Motion for Leave to Proceed In Forma Pauperis (“Motion to Proceed IFP”), the
21 Motion to Appoint Counsel, and a “RICO Case Statement.” (Doc. # 2, 3, 4).

22 **ANALYSIS**

23 **I. Motion to Proceed IFP**

24 All parties instituting any civil action, suit or proceeding in a district court of the United
25 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
26 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee
27 only if the plaintiff is granted leave to proceed in forma pauperis pursuant to 28 U.S.C.
28 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

1 In her affidavit accompanying the Motion to Proceed IFP, Plaintiff states that she is not
 2 employed, receives no income, has a checking account with a balance of \$200.00, owns a 2002
 3 Honda Civic for which she owes \$375.00, and does not have any other significant assets such
 4 as real estate, stocks, bonds or securities. (Doc. # 2). The Court has reviewed Plaintiff's
 5 affidavit of assets and finds it is sufficient to show that she is unable to pay the fees or post
 6 securities required to maintain this action. The Court grants the Motion to Proceed IFP
 7 pursuant to 28 U.S.C. § 1915(a).

8 **II. Initial Screening Pursuant to 28 U.S.C. § 1915(e)(2)(b)**

9 After granting IFP status, the Court must dismiss the case if the case "fails to state a
 10 claim on which relief may be granted" or is "frivolous." 28 U.S.C. § 1915(e)(2)(B).

11 The standard used to evaluate a motion to dismiss is a liberal one, particularly when the
 12 action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97, 97 (1976). However, even
 13 a "liberal interpretation . . . may not supply elements of the claim that were not initially pled."
 14 *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). The
 15 Complaint does not allege any legal basis under which Plaintiff is entitled to relief. The
 16 Complaint is written without paragraphs, in a stream of consciousness manner that is often
 17 unintelligible and/or incoherent. The allegations in the Complaint are insufficient to put
 18 Defendant on notice of the claims against her, as required by Rule 8 of the Federal Rules of
 19 Civil Procedure.¹ The "RICO Case Statement" (Doc. # 4) is written in the same largely
 20 incoherent/unintelligible manner as the Complaint, and similarly fails to allege a legal basis
 21 for relief. The Court finds that Plaintiff fails to state a claim on which relief can be granted.

22 A complaint "is frivolous where it lacks an arguable basis either in law or fact. [The]
 23 term 'frivolous,' when applied to the complaint, embraces not only the inarguable legal
 24 conclusion, but also the fanciful factual allegation." *Neitzke v. Williams*, 490 U.S. 319, 325
 25 (1989); *see also Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996); *Cato v. United States*, 70

26
 27 ¹ Federal Rule of Civil Procedure 8 provides: "A pleading that states a claim for relief
 28 must contain: (1) a short and plain statement of the grounds for the court's jurisdiction...; (2)
 a short and plain statement of the claim showing that the pleader is entitled to relief; and (3)
 a demand for the relief sought...." Fed. R. Civ. P. 8(a). Rule 8(d) provides that "[e]ach
 allegation must be simple, concise, and direct." Fed. R. Civ. P. 8(d).

1 F.3d 1103, 1106 (9th Cir. 1995). When determining whether a complaint is frivolous, the court
 2 need not accept the factual allegations as true, but must “pierce the veil of the complaint,” to
 3 determine if the allegations are “fanciful,” “fantastic,” or “delusional.” *Denton v. Hernandez*,
 4 504 U.S. 25, 32-33 (1992) (quoting *Neitzke*, 490 U.S. at 327-28).

5 The following is an example of the Complaint’s allegations:

6 Tiffany Newby is joined with black race from Santa Ana, California in murder
 7 in San Diego, California. The black race, orphan, massacre O.J. Simpson has
 8 many children born out of rape, wedlock, premature living in emergency shelters
 9 of Catholic Charities in San Diego, California that also were arrested with false
 10 registered nurse titles and employed in Sharp Hospitals, San Diego County,
 11 California.

12 (Compl., Doc. # 1, at 5). The “RICO Case Statement” contains similar allegations. (Doc. #
 13 4). Cumulatively, the Complaint and the “RICO Case Statement” contain 17 pages of
 14 rambling, often-fantastic allegations similar to the example quoted above. The Court dismisses
 15 the Complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).


16 **III. Appointment of Counsel**

17 In light of the Court’s sua sponte dismissal of this action, Plaintiff’s request for
 18 appointment of counsel is denied as moot.

19 **CONCLUSION**

20 IT IS HEREBY ORDERED that the Motion for Leave to Proceed in Formal Pauperis
 21 (Doc. # 2) is **GRANTED**. The Complaint is **DISMISSED** without prejudice, and this case
 22 shall be closed. The Motion to Appoint Counsel (Doc. # 3) is **DENIED** as moot.

23 DATED: October 16, 2009

24 
 25 **WILLIAM Q. HAYES**
 26 United States District Judge
 27
 28